

AG Contract No.: P001-2007-001841  
JPA File No.: **07-0621**  
Project No.: 010-B(201)A  
Project: I-10 Median Widening  
Section: Sarival Avenue to SR 101L,  
(107<sup>th</sup> Avenue-Wall Aesthetics)  
TRACS No.: 010 MA 125 H7096 01C  
Budget Source Item No.: City Funded

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF AVONDALE

**THIS AGREEMENT** is entered into October 29, 2007 pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF AVONDALE, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

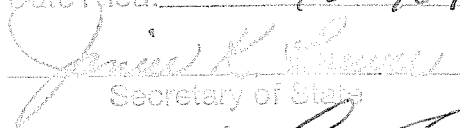

1. The State is empowered by Arizona Revised Statutes, § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes, § 48-572 and the City Charter, Section 3, Article I, to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Incident to the State's design and construction effort along Interstate 10 (I-10) between Sarival Avenue and State Route 101L (SR 101L), the City requests the State incorporate into the State's construction, its design of aesthetic enhancements to Soundwall 3B, wingwalls, abutments and piers for the I-10 bridge over 107<sup>th</sup> Avenue, herein referred to as the "Project". The cost to construct the aesthetics is estimated at \$310,983.00, including construction engineering and administration costs, all at the City's expense, as shown on Exhibit A, attached hereto and made a part hereof.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 29374  
Filed with the Secretary of State  
Date Filed: 10/29/07  
  
Secretary of State  
By: 

## **II. SCOPE OF WORK**

### **1. The City shall:**

a. Upon execution of this Agreement, designate the State as authorized agent on behalf of the City relative to the Project. Upon execution of this Agreement and receipt of an invoice from the State, remit, within 30 days, \$310,983.00 for the estimated cost to construct the Project, which includes fixed percentages for: construction surveying and layout (1%); contractor quality control, including testing (1%); mobilization (10%); and construction engineering and administration (14%) as shown in Exhibit A.

b. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project and submit them to the State for incorporating into the State's construction documents. Be responsible for any design consultant and contractor claims for additional compensation.

c. Be responsible for the total costs associated with the Project (aesthetics). Should the construction bid amount be greater than the City's initial payment, remit to the State the difference within 30 days upon receipt of an invoice.

d. Upon completion and acceptance of the Project, be responsible for the actual costs incurred by the State for the Project. Reimburse the State within 30-days upon receipt of an invoice, any difference between the estimated amount paid by the City and the actual costs of the Project, which includes fixed rates and fixed costs, as shown on Exhibit A.

e. Upon completion and acceptance of the Project, be responsible for all maintenance of the aesthetic treatments including all paint colors to Sound wall 3B, wingwalls, abutments and piers for the 107<sup>th</sup> Avenue Bridge and along I-10, including graffiti removal and restoration.

### **2. The State shall:**

a. Upon execution of this Agreement, agree to be the authorized agent for and on behalf of the City and invoice the City \$310,983.00 for construction of the Project, which includes fixed percentages for: construction surveying and layout (1%); contractor quality control, including testing (1%); mobilization (10%); and construction engineering and administration (14%) as shown on Exhibit A.

b. Incorporate the City's design plans, specifications and other such documents and services required for construction bidding and construction of the Project. Advertise for bids and award one or more construction contract(s) for the Project. Administer the contract(s) and make all payments to the contractor(s).

c. Upon completion of the Project, perform the final inspection and notify the City in writing the Project has been constructed in accordance with the Project documents and has been satisfactorily completed. Be responsible for the structural integrity of the Project.

d. Upon completion of the Project, invoice or reimburse the City any difference between the estimated amount paid by the City and the actual costs of the Project, which includes fixed rates and fixed costs, as shown on Exhibit A.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this agreement shall remain in full force and effect until completion of said Project and all reimbursements; provide however, that this Agreement, except any provisions herein for maintenance which shall be perpetual, may be cancelled at any time prior to the award of a Project advertisement, with 30-days written notice to the other party. It is understood and agreed that, in the event the City cancels this Agreement, the City shall be responsible for all costs up to the time of cancellation.

2. The State assumes no financial obligation or liability under this Agreement in association with the Project work requested by the City and provided herein. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, or for any resulting construction project, the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save, hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or reasonable attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes, § 38-511.

5. All books, accounts, reports, files and other records of either party relating to the Agreement or the work done under this Agreement shall be subject at all reasonable times to inspection and audit by the other party until five years after the State has repaid all monies in full. Such records shall be available for inspection upon five business days' notice at the offices of the party in possession of the records.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy between the City and the State, which may arise out of this Agreement, the parties hereby agree to abide by binding arbitration.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Avondale  
City Manager  
11465 West Civic Center Drive, Suite 120  
Avondale, AZ 85323

10. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF AVONDALE**

**STATE OF ARIZONA**

Department of Transportation

By   
MARIE LOPEZ-ROGERS  
Mayor

By   
SAM MAROUFKHANI, P.E.  
Deputy State Engineer

**ATTEST**

By   
LINDA FARRIS  
City Clerk



**SUMMARY OF IGA COSTS**  
for  
**EXHIBIT 'A'**

Engineer's Estimate Version  
JPA 07-062  
Date: 05/15/2007

**I-10 MEDIAN WIDENING  
SARIVAL TO 101L PROJECT**

**COST**

ITEM	DESIGN	R/W	CONSTRUCTION	TOTAL	DESCRIPTION
1 TRACS NO. H7096 01D/01C I-10-107TH OVERPASS/ENHANCEMENTS EXHIBIT "A"	N/A	N/A	\$ 310,983.00	\$310,983.00	The City of Avondale has requested that ADOT include aesthetic treatments to Soundwall 3B and to the wingwalls, abutments and piers for the I-10 bridge over 107th Avenue.

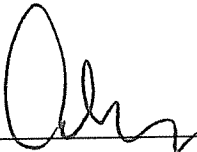
JPA 07-062

**ATTORNEY APPROVAL FORM FOR THE CITY OF AVONDALE**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF AVONDALE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 17<sup>th</sup> day of OCTOBER, 2007.

  
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City Attorney

**RESOLUTION NO. 2686-1007**

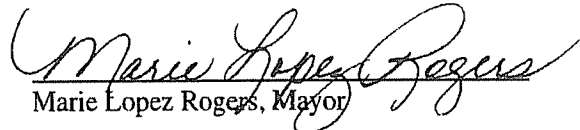
A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO DESIGN AND CONSTRUCTION OF AESTHETIC ENHANCEMENTS TO INTERSTATE 10 FROM LOOP 101 TO SARIVAL AVENUE.

**BE IT RESOLVED** BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

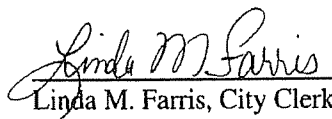
SECTION 1. That the Intergovernmental Agreement with State of Arizona regarding the design and construction of aesthetic enhancements to Interstate 10 from Loop 101 to Sarival Avenue (the "Agreement") is hereby approved in the form attached hereto as Exhibit A.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.


**PASSED AND ADOPTED** by the Council of the City of Avondale, October 1, 2007.

  
Marie Lopez Rogers, Mayor

ATTEST:

  
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

  
Andrew J. McGuire, City Attorney



Minutes of the Regular Meeting held October 1, 2007 at 7:00 p.m. in the Council Chambers.

**MEMBERS PRESENT**

Mayor Lopez-Rogers and Council Members

Chuck Wolf, Vice Mayor

Jim Buster

Frank Scott

Ken Weise

**MEMBERS EXCUSED**

Council Member Jason Earp

Council Member Betty Lynch

**ALSO PRESENT**

Charlie McClendon, City Manager

Andrew McGuire, City Attorney

Brian Berndt, Development Services Director

Eric Morgan, Planner II, Development Services

Linda Farris, City Clerk

Mayor Lopez-Rogers called the meeting to order and led those present in the Pledge of Allegiance and a moment of reflection by Pastor Nick Hill.

Mayor Lopez Rogers stated that Council Members not present at the Special Meeting had not been excused at that time and would now be considered excused.

**2) UNSCHEDULED PUBLIC APPEARANCES**

There were no requests to speak.

**3) CONSENT AGENDA**

Items on the Consent Agenda are of a routine nature or have been previously studied by the City Council at a Work Session. They are intended to be acted upon in one motion. Council Members may pull items from consent if they would like them considered separately.

**a. SPECIAL EVENT LIQUOR LICENSE – SOUTHWEST HISPANIC CULTURE ASSOCIATION – BILLY MOORE DAYS**

Special Event Liquor License for Mr. Armando Moraga representing the Southwest Hispanic Culture Association, 9916 West Kirby, Tolleson, to be used in conjunction with Billy Moore Days, October 26, 27, and 28, 2007, at Festival Fields, 101 East Lower Buckeye Road.

**b. LIQUOR LICENSE – TASTINGS WINE BAR**

Series 7 On-Sale Retailer's license to sell beer and wine, and a Series 16 (State Series 12) Restaurant license to sell all spirituous liquors at Tastings Wine Bar & Bistro, 1809 North Dysart Road, #106.

Page 2  
REGULAR MEETING  
October 1, 2007

**c. GERALD HARDT GRANT**

Gerald Hardt Memorial Grant contract with the Arizona Criminal Justice Commission.

**d. ESTABLISHMENT OF A CITIZEN CORPS COUNCIL**

Establishment of an Avondale Citizen Corps Council (ACCC).

**e. RESOLUTION 2684-1007 ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM**

Resolution adopting the National Incident Management System (NIMS) as the Emergency Management System for the City of Avondale.

**f. RESOLUTION 2687-1007 AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT – ARIZONA DEPARTMENT OF TRANSPORTATION FOR COST SHARING THE REPLACEMENT OF THE 107<sup>TH</sup> AVENUE OVERPASS STRUCTURE**

Resolution authorizing an Intergovernmental Agreement with the Arizona Department of Transportation authorizing payment of \$2,019,335 as the City's share of the cost to replace the I-10/107<sup>th</sup> Avenue overpass structure, authorizing the transfer of \$500,000 from 304-1154, Traffic Signal – Indian School/El Mirage, \$420,000 from 304-1157, Avondale Boulevard – Northbound @ I-10 Right Turn Lane, and \$1,200,000 from 304-1193 (FY08-09), Buckeye Road – 107<sup>th</sup> Avenue to Avondale Medians to a newly created line item for the 107<sup>th</sup> Avenue overpass structure on the Interstate 10 project, and authorizing the Mayor, or City Manager and City Clerk to execute the necessary documents.

**g. RESOLUTION 2686-1007 AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT – ADOT – I-10 AESTHETIC ENHANCEMENTS**

Resolution authorizing an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for I-10 aesthetic enhancements, and authorizing the Mayor, or City Manager and City Clerk to execute the necessary documents.

**h. ORDINANCE 1265-1007 AUTHORIZING THE DEDICATION, PURCHASE, OR CONDEMNATION OF LAND AND EASEMENTS FOR RIGHT-OF-WAY PURPOSES RELATING TO THE VAN BUREN ROADWAY IMPROVEMENTS PROJECT**

Ordinance authorizing the dedication, purchase or condemnation of land and easements for right-of-way purposes relating to the Capital Improvement Project ST1089 for Van Buren Street Roadway Improvements, from the Agua Fria Bridge to Fairway Drive, and authorizing the Mayor, or City Manager and City Clerk to execute the necessary documents.

Page 3  
REGULAR MEETING  
October 1, 2007

City Attorney, Andrew McGuire, read the resolutions and the ordinance by title only. Vice Mayor Wolf moved to approve the Consent Agenda including the resolutions and the ordinance. Council Member Weise seconded the motion.

Mayor Lopez Rogers invited further discussion, and hearing none, called for a vote.


ROLL CALL VOTE AS FOLLOWS:

Council Member Earp	Excused
Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Wolf	Aye
Council Member Lynch	Excused
Council Member Weise	Aye

Motion carried unanimously.

4) **PUBLIC HEARING AND ORDINANCE 1269-1007 – PAD REZONE – ENTORNO  
– Z-06-13**

Brian Berndt, Development Services Director, stated this request was for a rezoning on property located at the southwest corner of Indian School Road and 99<sup>th</sup> Avenue, to be rezoned from AG to PAD. He showed the Council an aerial slide view and described the surrounding properties. From a Land Use map, he described the designation for the property as Mixed Use and Freeway Commercial, and pointed out the new activity and existing activity along the 101 Corridor and 99<sup>th</sup> Avenue. Mr. Berndt pointed out the different land uses of properties in the area and stated the applicant proposed to go to an eight story building in the urban core, which currently the Avondale Specific Area Plan does not allow. He stated that Staff is working to modify that designation and will bring the matter to Council before the end of the year. He then described the dwelling units per acre on the property as 8-14 du/ac, 4-7 du/ac, and 15-24 du/ac, and showed examples of what the units will look like to the Council, pointing out that they would provide the variations that the City has been looking for with these types of Mixed Use developments, and stated Staff is very encouraged by that. Mr. Berndt then showed the Council a slide demonstrating how the commercial property and parks would be laid out. He pointed out that along the western edge of the property is the Roosevelt Irrigation District Canal, which provides an additional 30 foot setback. He stated there is a stipulation that the residential heights be limited to one story along the western boundaries of the property.

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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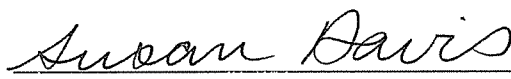
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012007001841 (JPA 07-062-I), an Agreement between public agencies, i.e., The State of Arizona and The City of Avondale, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED:       October 22, 2007

TERRY GODDARD  
Attorney General

  
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SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:79590  
Attachment